The Corporation Journal

Issued by
The Corporation Trust Company
New York, 37 Wall Street

Chicago, 112 W. Adams Street
Pittsburgh, 1202 Oliver Bldg.
Philadelphia, 1428 Land Title Bldg.
Albany, 158 State Street
Washington, D. C., 501 Colorado Bldg.
Jersey City, 15 Exchange Place
Portland, Me., 281 St. John Street
St. Louis, Federal Reserve Bank Bldg.

Corporation Registration Company
Boston, 511 Exchange Bldg.
Corporation Trust Co. of America
Wilmington, 394 duPont Bldg.

No. 58. Vol. 2. April 30, 1916 Pages 161-180

DOMESTIC CORPORATIONS.

ALABAMA.

VOLUNTARY DISSOLUTION, under Section 3510, Code 1907, as distinguished from dissolution by Court proceedings, under Section 3511, are within the provisions of Section 3516 providing that corporations shall exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits, settling their business, disposing of their property, and dividing their capital stock. Roe v. Durham, 71 So. 109.

ARKANSAS.

CONTRACT BETWEEN CORPORATIONS HAVING THE SAME DIRECTORS will not be set aside and further dealings thereunder restrained merely because it proved profitable to the company other than the one whose stockholders complained. Bad faith was not shown. Lewis v. Fakes, 183 S. W. 755.

LIABILITY OF OFFICER FOR FAILURE TO FILE REPORT. Section 848, Kirby's Digest, requires the president and secretary of every corporation to file an annual report of the corporation's financial condition, as of January or of July next preceding. For neglect or refusal to file this report, they are personally liable for all debts of the corporation contracted during the period of such neglect or refusal. This is a primary and not a secondary liability. The unpaid holder of a corporate note has a choice of remedies or he may proceed simultaneously against the maker of the note and the indorsers thereon and against the officers for neglect. McDonald v. Mueller, 183 S. W. 751.

GEORGIA.

A TRADE OR COLLOQUIAL NAME may be acquired by a corporation and a contract made with it in that name may be sued on in its true corporate title. McClain v. Georgian Co., 87 S. E. 1090.

NON-EXISTENT IS THE TERM APPLIED TO A CORPORATION, where partners merely took out a charter under the firm name but had no stock subscriptions or list of stockholders, or minutes. The members were liable as partners on a note alleged by them to have been given by this corporation. The Supreme Court says that "if such pretended organization is to be treated as a corporation, so as to exempt the alleged stockholders from liability as partners, then it would seem that any two merchants doing business as partners could simply say to one another: We will consider ourselves a corporation; I will be president and you secretary and treasurer—and this fact would exempt them from liability as partners to a creditor selling them goods with knowledge of this formation of a corporation." Ward-Truett Co. v. Bryan & Laub, 87 S. E. 1037.

IDAHO.

A MINING COMPANY MAY NOT LOAN even its idle funds to another corporation. This would be outside both its express and implied contractural powers. Riley v. Callahan Mining Co., 155 Pac. 665.

HOLDING POWERS, conferred by section 2769 Rev. Codes, as amended and as specifically stated in the charter, must always have relation to the purpose for which a particular corporation is formed. The State Supreme Court says: "We do not think the Legislature intended by the authorization to any corporation 'as such' to 'purchase, own, vote, sell or hypothecate the stock and bonds of other corporations,' to confer a general grant of power wholly irrespective of the purpose for which the corporation might be organized." Riley v. Callahan Mining Co., 155 Pac. 665.

MINORITY STOCKHOLDERS are entitled to equitable relief, where it is shown that the officers and directors have combined to exclude them from participation in the business and have pursued "a course of conduct both prejudicial to the minority stockholders and of itself illegal and ***ultra vires.***" Dissolution will not be ordered, but reduction of capital will be required in order to enable a distribution "among plaintiffs in exchange for the surrender and cancellation of their share certificates, of a proportionate share of the corporate assets, after all the corporate obligations are paid." Riley v. Callahan Mining Co., 155 Pac. 665.

INDIANA.

PROVISION IN ARTICLES OF INCORPORATION for "a board of general managers" is not required by statute, and therefore has no other force or effect than as a by-law. Shaw v. Bankers' Nat. Life Ins. Co., 112 N. E. 16.

DELEGATION OF AUTHORITY BY DIRECTORS to a board of managers, over matters calling for the exercise of judgment and discretion for a period of thirty years is illegal. The Court says: "Assuming, without deciding, that a board of directors may for the time of its own existence delegate powers as comprehensive as in the contract here, we know of no decision or authority that it may be done beyond recall for such an extended period. Shaw v. Bankers' Nat. Life Ins. Co., 112 N. E. 16.

LOUISIANA.

FORECLOSURE OF BOND ISSUE. The mortgage to secure a bond issue provides that in case of any default in the payment of interest or principal the trustee may on request by the holders of twenty-five per cent. in amount of the bonds then outstanding declare the principal due and payable. Notice under seal of the corporate trustee was a sufficient declaration and authentic evidence that it had been required in writing by the holders of twenty-five per cent. of the outstanding bonds to institute foreclosure proceedings. As the bonds were payable at the office of the trustee it was not necessary to demand payment or give notice of the mortgagor's own default. Colonial Trust Co. v. St. John Lumber Co., 71 So. 147.

MARYLAND.

A COMPLETE REVISION OF THE CORPORATION LAWS is contained in Chapter 596 of the Laws of 1916, approved by the Governor on April 18th and to take effect on June 1, 1916. New features of the law are provision for amendment of the certificate of incorporation by the incorporators before subscriptions to stock have been accepted (Section 6), provision for the issuance of shares without par value (Section 34A), changes in the procedure with reference to the issuance of stock for less than par or for services or property, and a provision that "there shall be no individual liability on any subscriber to; or holder of such stock, beyond obligation to the corporation or its receiver, trustee or other person winding up its affairs, to comply with the terms of the contract of subscription thereto." (Section 35). Copies of the new law may be secured at a small charge from our Legislative Department.

MICHIGAN.

DIVIDENDS MUST FIRST BE DECLARED by the board of directors, before a holder is entitled to recover cumulative preferred dividends in an action at law. Juries may not decide whether there are profits and if so whether they should be distributed. "If each stockholder might call in a jury at his pleasure to determine whether a dividend should be declared, corporations would be short-lived affairs and of but little value." The proper remedy is in equity. Knight v. Alamo Mfg. Co., 157 N. W. 24.

MISSOURI.

COSTS OF RECEIVERSHIP. The Court has no authority to order an audit of a corporation's books in a suit for a receivership brought on the ground of the misconduct of its officers. The cost of such an audit is not recoverable against the corporation. State v. Kimmel, 183 S. W. 651.

PROOF OF DISSOLUTION. An affidavit of dissolution filed with the Secretary of State pursuant to R. S. 1909, Sec. 3031, is not conclusive proof that a corporation has dissolved. Complete dissolution can only be effected by Court proceedings, (Sections 2995-3000). Affidavit of dissolution may be filed by a corporation which has merely retired from business, but retains its corporate identity. Barrett v. Stoddard County, 183 S. W. 644.

NEBRASKA.

PURCHASE OF STOCK BY CORPORATE OFFICER. The owner of 201 shares sold them through a stockbroker to a third party alleged to be acting for the benefit of two others, one of whom was the president, director and a stockholder of the corporation, for $75 per share. All that the owner knew of their probable value was that her deceased husband had for several years received no dividend upon them. There was evidence that she talked with the president in regard to dividends, but was given no information as to the condition of the company nor the probable value of the stock. The president was alleged to have sold these shares at $110 per share to a purchaser of all the corporate stock and that the stock was purchased at $75 per share for the purpose of resale at this enhanced price. A judgment against the president and the other purchaser for the difference between $75 and $110 per share is affirmed. A director before he buys is bound to make a disclosure of facts affecting the selling price of the stock, when he can do this without detriment to the interest of the company. Though not strictly a trustee, his duties and liabilities are much the same. Jacquith v. Mason, 156 N. W. 1041.

NEW YORK.

CHANGE OF CORPORATE NAME is effected by petition to a special term of the Supreme Court (Sections 60-65 General Corporation Law). Change will be granted over the objection of two stockholders owning $117,600 out of a total stock issue of $300,000. The Appellate Division, First Department, says: "The proposed change was duly authorized by the board of directors of the petitioner for reasons which, to them seemed sufficient, and which certainly were not without force and reason. The change of name of a corporation is one of those details of corporate and business management with which, in the absence of fraud or illegality, the courts will not interfere, but will respect the determination of those intrusted with the direction of the affairs of the corporation, even if it does not meet with the unanimous approval of the stockholders." In the matter of the application of Hinds, Noble & Eldredge for authorization to change its corporate name to Hinds, Hayden & Eldredge, Inc., (not yet officially reported).

BONDS OF A CORPORATION MAY NOT BE GIVEN BY IT AS COLLATERAL for the payment of a pre-existing debt. This would constitute a violation of Stock Corporation Law, sec. 55, which provides that no corporation shall issue either stock or bonds, except for money, labor done, or property actually received for the use and lawful purpose of the corporation. In re Progressive Wall Paper Corp., 229 Fed. 489.

AN AMENDMENT TO THE GENERAL CORPORATION LAW SECTION 191, became effective on March 20, 1916. It adds a provision for filing the court order of corporate dissolution, made as incident to receivership, in the office of the clerk of the county in which the principal office of the corporation or the principal place of business is located, a certified copy, thereof, if a banking corporation with the superintendent of banks, if an insurance corporation with the superintendent of insurance, if a business, transportation, railroad or membership corporation with the secretary of state.

AN AMENDMENT TO THE MEMBERSHIP CORPORATIONS LAW, section 41, became effective on March 2, 1916. It increases the maximum number of directors to forty, in place of a former maximum of thirty.

NORTH CAROLINA.

CONDITIONAL SUBSCRIPTION TO STOCK. A subscriber to stock gave a note in evidence of his subscription, and on the note placed the condition "that the subscription is to be used to do business on the Rochdale system and for this purpose only." "Rochdale system" is a term used to denote "any kind of business, store or other, where the co-operative method is pursued." The corporation was operated on this plan for some months and then it changed to the usual method. It was still conducted at a loss. In a suit for that purpose the subscriber is held liable on the above note. A conditional subscription may be made and the conditions will, to a certain extent, be enforced, but a corporation has no authority to accept subscriptions upon terms that constitute a fraud upon other subscribers or upon persons who become creditors of the corporation. The subscriber is absolutely liable, but he may recover damages against the corporation for breach of the agreement. In the instant case no damages are shown. Warren Co. Co.-Op. Ass'n v. Boyd, 88 S. E. 153.

PENNSYLVANIA.

CAPITAL STOCK IS NOT A LIABILITY TO BE TAKEN into account in determining whether a corporation is solvent. The opinion states that this is the first case wherein this precise question has been raised and decided. Tepel v. Coleman, 229 Fed. 300.

VOID INDEBTEDNESS. Upon criticism of the management and complaint about the failure to earn dividends, the general manager and treasurer offered to take over the stock of any dissatisfied stockholder at par. To effect this he had certain shares delivered to the corporation and gave a second mortgage on the corporate property as security for payment. It's own capital stock is not property in the required sense and no corporation may issue bonds except for property. (Constitution Article 16, Sec. 7 and Act of April 17, 1876, P. L. 32, Sec. 4). It therefore follows that the debt created is fictitious and the security given void. Tepel v. Coleman, 229 Fed. 300.

PAYMENT OF TAXES UPON FORECLOSURE. In the distribution of a fund realized from the sale of corporate property upon foreclosure, taxes due the State must first be paid, although no lien for taxes has been filed as required by the Act of April 16, 1827, P. L. 471, and although the mortgage foreclosed is recorded prior to the Act of June 15, 1911, P. L. 955, Sec. 1, which provides that in the distribution of the fund so realized taxes shall first be paid. This act does not affect the priority of the State's claim for taxes, but relates to procedure only; it does not, therefore, impair the obligation of contract. Lloyd v. Wyalusing Light, Heat and Power Co., Inc.; Oct. Term, 1915, No. 253 (C. P. Bradford Co., May Term, 1914, No. 642 not yet reported.)

TEXAS.

CANCELLATION OF SUBSCRIPTION to stock obtained on the representation that the corporation would receive the subscriber's note in payment and extend the same indefinitely, is ordered in General Bonding & Casualty Ins. Co. v. Mount, 183 S. W. 783.

A CORPORATION IS LIABLE FOR SLANDER uttered by its manager in discharging an employee. Moreover, a telephone company is "under as much obligation to the young ladies employed by it to protect them from insults and slander by its manager in the conduct of its business as is a railway company to protect its passengers from insults or slander by its conductor." Southwestern Telegraph & Telephone Co. v. Long, 183 S. W. 421.

UTAH.

CORPORATION AS MEMBER OF PARTNERSHIP. A corporation engaged in the business of stockbroker entered into a stock purchase agreement under which profits and losses were to be shared. In litigation involving this contract the Court holds that whether a corporation may or may not become a partner depends upon circumstances and whether it, by its charter or statute is given capacity to do so. For the purposes of the instant decision, it is assumed that the corporation had such capacity. Morgan v. Child, Cole & Co., 155 Pac. 451.

VIRGINIA.

A "BLUE SKY" LAW was enacted by the 1916 Legislature and was approved by the Governor, March 23, 1916. It becomes effective June 18, 1916. The State Corporation Commission is given power to investigate the promotion of any securities or contracts or city, town or suburban lots and to issue process compelling attendance and production of papers before it pursuant to such investigation. It is made a misdemeanor, punishable by a fine of not more than five thousand dollars or by confinement in jail for not more than one year, or by both fine and imprisonment, to devise any fraudulent issuance or sale of securities, etc., and to commit any overt act in connection therewith in the State.

WASHINGTON.

LIABILITY OF OFFICER ON CONTRACT RATIFIED BY THE CORPORATION. The temporary manager made a twelve months contract with a newspaper for advertising the company's stores. The company made some payments and then sought to charge them to the manager. It is not entitled to do this even if the manager had agreed to assume the liability personally. Such an agreement on his part is without consideration. The company ratified the contract by part payment and receipt of benefits. Carstens Packing Co. v. Lewis C. Troughton, Inc., 155 Pac. 758.

WISCONSIN.

THE "BLUE-SKY LAW" was altered by legislation, effective October 1, 1915, so as to eliminate the requirement of a license and the payment of a fee. As the law now stands, a corporation or person desiring to sell stock in the state must file with the Railroad Commission at Madison a statement describing the manner in which it proposes to do business and list with the Commission the securities it desires to sell. An order of the Commission under date of Jan. 3, 1916, specifies in detail the documents required to be filed.

LIABILITY TO INNOCENT HOLDER OF VOID BONDS. A corporation is liable to an innocent holder of its bonds issued contrary to the statutory requirements for payment. Section 1676—27 of the Uniform Negotiable Instruments Law enacted in Wisconsin in 1899 provides that a holder in due course may with certain exceptions enforce payment of an instrument for the full amount thereof. This law is inconsistent with Section 1753, adopted in 1874, which provides that no corporation shall issue any bonds, except for money or property, estimated at its true money value, actually received by it, equal to 75 per cent. of the par value thereof, and that all bonds issued contrary thereto shall be void. The inconsistency is irreconcilable, and in such case the legislation last enacted must prevail. In re Footville Condensed Milk Co., 229 Fed. 698.

INVALIDITY OF AGREEMENT BY DIRECTOR TO REPURCHASE STOCK. Albert F. Timme became the manager of a motor car company and purchased 100 shares of its stock, in consideration of a contract with one of its directors, whereby this director agreed to repurchase the stock in the event that Mr. Timme's employment should be discontinued for any reason. Mr. Timme resigned, demanded that the director repurchase his stock, and upon refusal brought an action against him upon the contract. Recovery is denied by the Court, because the contract sued upon is invalid. It is against public policy for directors to make contracts which are antagonistic to the free and impartial discharge of their official duties. "The defendant as director had a voice in determining whether or not plaintiff was to continue in the management of the corporate business, whether or not plaintiff's management was for the general interest of the corporation and its stock-

holders. Obviously his duties as director and his private interest under the contract to repurchase plaintiff's stock upon the conditions stated were antagonistic, and his private interests might oblige him to act contrary to his duties toward the other stockholders." Timme v. Kopmeier, 156 N. W. 961.

GENERAL.

The Corporation Trust Company assists attorneys in the organization of corporations in every State, the Provinces of Canada, Cuba and Mexico. Forms and precedents on file. Information regarding the cost and statutory requirements free on request.

FOREIGN CORPORATIONS.

ALABAMA.

TRANSACTIONS CONSTITUTING INTERSTATE COMMERCE. An order was taken in Alabama for a bottling machine by the agent of a foreign corporation. The order was sent to Tennessee and the machine was there constructed loaded on a car and shipped by the corporation. It was taken from the car by the purchaser and set up by him in his place of business. The agent put some slats in the groove provided for them, placed the door on its hinges, and operated the machine for the purpose of showing the purchaser's employees how to do it. Notes were then given in payment. The machine having proven unsatisfactory, the agent returned and had considerable work done on it, but it still failed to operate satisfactorily. In a suit on the notes, it is held that "the facts occuring prior to the time the notes were given stamp the transaction as interstate business and in no way offensive to the statutes," requiring qualification and licensing of foreign corporations. Citizens' Nat. Bank v. Bucheit, 71 So. 82.

VALIDITY OF CONTRACTS OF UNREGISTERED CORPORATION. A recent decision of Court of Appeals in Alabama summarized the law of that state regarding the validity of contracts of unregistered foreign corporations as follows: Contracts made *outside the state* to be performed in the state are not void *ab initio*, but the courts will not enforce such contracts unless the corporation has has qualified before entering upon the performance thereof, if the performance necessitates "doing business" in the state. Any contract entered into *in the State* by an unregistered corporation confers no right on the corporation that the courts of the State will recognize or enforce at its instance. If a contract is declared void by the statute, it is void even in the hands of innocent purchasers in due course. If it is not declared void, and is subject to the law merchant, it will be protected in the hands of an innocent purchaser for value in due course and without notice. For failure to comply with Code of 1907, Secs. 3642-46, contracts of foreign cor-

porations are not declared void, and although such contracts are not enforceable in the hands of the corporation, if negotiable and in the hands of an innocent purchaser without notice they will be enforced. For failure to comply with Secs. 3647-49 contracts are not void except at the option of the other party, hence if negotiable and in the hands of innocent purchasers without notice they will be enforced. For failure to comply with Secs. 3651-53 contracts are declared by the statute to be null and void. The court was inclined to hold that contracts entered into in violation of these sections are void even in the hands of an innocent purchaser without notice but finally decided on authority of the Supreme Court of the State that notes held by an innocent purchaser for value in due course are enforceable although the statute was violated in their making. Citizens' Nat. Bank v. Bucheit, 71 So. 82.

PRIOR CONTRACT ADOPTED AFTER QUALIFICATION. A power company organized under the laws of New Jersey made a contract to supply electrical current to a railway in Alabama, before it had obtained authority to do business as a foreign corporation. The executed instrument was without legal validity as at that time the corporation had no power to transact business in Alabama. It afterwards qualified, and the parties continued thereafter to conform their dealings to the terms of the agreement. This had the effect of an adoption of the contract. The Circuit Court of Appeals, Fifth Circuit, says: "While the parties could not by any act of ratification make a void contract a valid one from the time it was undertaken to be made, they could, when each of them was duly qualified to contract, elect to adopt as the whole or a part of the contract by which their dealings were to be governed what was expressed in an instrument which was ineffectual at the time it was signed." Montgomery Traction Co. v. Montgomery L. & W. P. Co., 229 Fed. 672.

ARKANSAS.

QUALIFICATION SUBSEQUENT TO CONTRACT. A Texas corporation entered into a contract on August 16, 1912, for the sale of certain medicines to a customer in Arkansas. After deliveries thereunder and on April 9, 1913, it secured a permit to do business in the state. It then made another contract with the same party. There was a balance still due under the first agreement. In a suit brought after compliance for the balance under both contracts, it was contended that its failure to qualify debarred its right to recover anything under the first contract. The Supreme Court holds, however, that the subsequent compliance rendered the agreement enforceable. The statute does not expressly declare contracts of non-complying companies void. Waxahachie Medicine Co. v. Daly, 183 S. W. 741.

FLORIDA.

PRIOR CONTRACT ADOPTED AFTER QUALIFICATION. A New York corporation entered into a written contract on Nov. 21, 1912, to construct a

building in Florida. On Dec. 10, 1912, it commenced work and on Jan. 11, 1913, it complied with the foreign corporation laws. In a suit to enforce a mechanics lien on the building a defense was interposed that the contract was void, as provided in the statute (Acts of 1907, c. 5717). "Conduct of both the plaintiff and the owner while the work on the building was progressing after January 11, 1913, unequivocally showed that each of them was relying on the written instrument which had been signed as embodying the contract by which their dealings were governed. * * * The contract, so far as the statute made it void, could not be ratified with the result of giving it validity from the time it was undertaken to be made; but after both the parties were free of any disability they could make a new contract and recognize the instrument already signed as embodying the terms of it. * * * The conduct of the parties to the dealings subsequent to the issue of the permit had the effect of an adoption by them of the instrument they had signed as the evidence of the contract under which the dealings were carried on and of estopping the owner to set up a lack of right in the plaintiff to claim under it." Turner Const. Co. v. Union Terminal Co., 229 Fed. 702.,

LOUISIANA.

CONTRACTS OF NON-QUALIFIED CORPORATIONS are not void. The requirements for authorization to do business provide that no foreign corporation shall do any business in the state without having one or more known places of business and an authorized agent or agents in the state upon whom process may be served (Const. Art. 264, Act 54, 1904, p. 33), but contracts of non-qualified companies are not declared to be null or unenforceable. If the Legislature had intended this result it would have said so. Thomas Cusock Co. v. Ford, 71 So. 196.

MAINE.

PENALTIES FOR FAILURE TO COMPLY with the statutes requiring the qualification of foreign corporations (Sections 1 and 2, Chap. 152, Laws of 1911) provide that no action may be maintained or recovery had in any contract. This does not apply to remedies for wrongs against the property in this state of a delinquent foreign corporation. Such a corporation may bring an action of trover against a sheriff who wrongfully attached its property as that of another. Dominion Fertilizer Co. v. White, 96 Atl. 1069.

MARYLAND.

COMPLIANCE AFTER SUIT IS BROUGHT. Certificate of authority to do business in the state issued after suit has been filed is sufficient compliance with the qualification requirements to enable the corporation to continue the action. Strasbaugh v. Steward Sanitary Can Co., 96 Atl. 863.

CERTIFICATE OF AUTHORITY issued by the Secretary of State is admissable in evidence as proof of compliance with the foreign corporation laws, without the introduction of the papers themselves from which the certificate is made. Strasbaugh v. Steward Sanitary Can Co., 96 Atl. 863.

MISSOURI.

"DOING BUSINESS." A California corporation sold some raisins to a St. Louis grocery company through a selling agent in San Francisco and a broker in St. Louis. It is entitled to sue for a breach of contract of this sale, although it had not qualified as a foreign corporation. The St. Louis Court of Appeals says: "* * * the transaction involved here falls within the category of interstate commerce rather than that of doing business in Missouri. Plaintiff maintained no business establishment here. It neither stored, nor paid for the storage of, goods nor carried any stock on hand here save an occasional car of dried fruits on consignment to its brokers for sale by the broker on plaintiff's account. * * * In a similar case, though that of a factor, it is said the plaintiff corporation is not selling fruit in the state when the transaction assumes the form above set forth, but the factor is. Therefore the transaction is one of interstate commerce, and this is true even though the title of the goods remains in the seller for the while." Dinuba Farmers' Union Packing Co. v. J. M. Anderson G. Co., 182 S. W. 1036.

"DOING BUSINESS." A Kansas corporation agreed to establish and conduct a Chautauqua at Joplin, in consideration of the purchase of a certain number of season tickets by certain citizens. It did not comply with sections 3037 to 3041 R. S. 1909, requiring the qualification of foreign corporations. For that reason it is not entitled to recover on the contracts to purchase these tickets. The plaintiff was not engaged in a mere isolated transaction. It made arrangements with various performers and lecturers to come to Missouri from other states; it erected a tent, sold tickets, conducted the entertainment for a week and advertised it as a permanent affair, to return the following summer. Wichita Film & Supply Co. v. Yale, 184 S. W. 119.

NEW YORK.

A COMPLAINT WHICH AVERS that the goods, payment for which suit is brought, were sold "in the state of Ohio" need not allege that the plaintiff foreign corporation had procured a license to do business in New York. Strauss-Pritz Co. v. Axson, 157 N. Y. Supp. 723.

SERVICE OF PROCESS upon the designated agent of a Pennsylvania corporation is binding, though it relates to an action for breach of the corporation's contract for injuries received in its employ in Pennsylvania. Designation of agent pursuant to General Corporation Law Section 16 is for any action which under the laws of this state may be brought against a foreign corporation. The order of the

Appellate Division setting aside the service in this case (170 N. Y. App. Div. 594, 156 N. Y. Supp. 647, Corporation Journal p. 130) is reversed. Bagdon v. Philadelphia & Reading Coal & Iron Co. 217 N. Y. 432, 111 N. E. 1075.

PENNSYLVANIA.

SERVICE OF PROCESS. Process may issue against a foreign corporation either in the county where the corporation has its principal place of business or in the county where the cause of action arises. In Miller Lock Company v. Federal Equipment Company (25 District Reports, page 243) the defendant company, a registered foreign corporation was sued in Philadelphia County where the cause of action arose, and service was made on the Secretary of the Commonwealth under the Act of June 8, 1911, P. L. 710, which requires that the Secretary of the Commonwealth be made the agent of foreign corporations for service of process. The defendant took a rule to set aside service on the ground that it did not maintain an office in Philadelphia County nor were any of its officers or agents there. The Court, however, held that the Act of 1911 confers jurisdiction not only in the county where the corporation maintains a principal office but also in the county where the cause of action arose. The rule to set service aside was therefore discharged.

PERSONAL LIABILITY ATTACHING TO AN AGENT of an unregistered foreign corporation for contracts made in the State will not be enforced against one who signs a contract as Treasurer of such corporation where suit on the contract in question was also brought against the corporation itself and service secured thereon. (Lamb v. Wheeler, C. P. Somerset Co., May Term 1915, No. 41 not yet reported.) Suit may be brought against the agent of the unregistered foreign corporation by substituting the agent for the corporation. If the corporation itself is sued and is in court by appearance of counsel there is no need for this substitution and everything has been accomplished which the registration was intended to accomplish.

PROTECTION OF NAME. A domestic corporation which incorporates and engages in business prior to the registration of a foreign corporation of a similar trade name may enjoin the foreign corporation from using the name within this jurisdiction even though the foreign corporation was doing business in the State prior to the incorporation of the domestic company (Akron Tire Co. of Philadelphia, Inc. vs. Akron Tire Co., Inc., 25 District Reports, page 157). The Court held that the rights of the foreign corporation to protection in its trade name did not begin until after its registration. It was also found that when this foreign corporation registered, the domestic corporation was in existence and doing business but the fact that the foreign corporation was here doing business before the domestic company was chartered was not considered material by the Court as any rights which the foreign corporation may have had were fixed at the time of registration and did not relate back beyond that date.

OKLAHOMA.

SERVICE OF SUMMONS upon a person described merely as "agent" of a foreign corporation is invalid. The statute (section 4715, Revised Laws, 1910) requires service upon designated officers, including the "managing agent." A return may be amended, but the evidence in this case showed that the agent served was a "collecting" and not a "managing" agent, so that amendment of the return would be unavailing. M. Rumely Co. v. Bledsoe, 155 Pac. 872.

VIRGINIA.

"DOING BUSINESS." A fine of $1,000 imposed by the State Corporation Commission upon the Dalton Adding Machine Company for transacting business in the state without first obtaining a certificate of authority (Section 1104) is upheld by the Supreme Court of Appeals. The company is said to be "doing a substantial part of its business" in the state as distinguished from interstate commerce: "(a) In bringing its machines into this state before selling them, and in maintaining a stock of machines for exhibition and trial, and in selling such machines in this state, after their transportation in interstate commerce has been concluded and they have become mingled with the general mass of property in this state; (b) In renting such machines and collecting rents therefor from its customers in this state at will; (c) In buying and exchanging machines for machines made by other manufacturers, and in selling such machines so received in exchange at will; (d) In employing a mechanic in this state and entering into contracts for repairing of machines owned by persons in this state from time to time and collecting the charges therefor; (e) In keeping on hand in this state certain parts of machines and a stock of paper and ribbons suitable for use upon the machines, which are freely sold from time to time by its agent in Richmond." Dalton Adding Mach. Co. v. Commonwealth, 88 S. E. 167.

GENERAL.

The Corporation Trust Company assists attorneys to obtain authority for foreign corporations to do business in every State, the Provinces of Canada, Cuba and Mexico. Information regarding fees, taxes and statutory requirements free on request.

TAXATION.

ALABAMA.

TIME OF PAYMENT OF FRANCHISE TAX. Section 16, Act of 1915, imposing an annual franchise tax upon domestic and foreign corporations does not fix a time for payment or the commencement of the tax year. It is therefore due and payable the 1st of January and should cover a calendar year; that is, from January 1st to and including December 31st. (Acts 1911, p. 184, secs. 33E, 33G· Code 1907, Sec. 2403) Williams v. State, 71 So. 99.

MASSACHUSETTS.

INHERITANCE TAX ON SHARES OF FOREIGN CORPORATION. The Massachusetts inheritance tax law exempts property "*Legally* subject in another state or country to a tax," and "actually paid or guaranteed or secured in accordance with law in such other state or country." Inheritance taxes paid to Michigan on shares of stock in the Chicago, Milwaukee & St. Paul Railway Company, a Wisconsin corporation, with lines in Michigan, are not "legally" subject to the Michigan law in spite of a decision by a Michigan court to the contrary, and are not deductible from the taxes payable on the estate of a resident of Massachusetts. Taxes on shares of stock in the Chicago & Northwestern Railway Company are deductible, since Michigan is one of its incorporating states. "Situs of the shares of stock within the taxing state is the foundation of jurisdiction to tax. That situs ordinarily can be only at the domicile of the owner or at the domicile of the corporation." Michigan was not in any way the domicile of the Chicago, Milwaukee & St. Paul, but it was one of the domiciles of the Chicago & Northwestern. Michigan collected the entire tax on the Chicago & Northwestern stock. Though a more equitable rule where a corporation is organized under the laws of several states is to apportion the tax on the value of each share as represented by property in the taxing state, Massachusetts must follow the Michigan rule in the instant case. Welch v. Burrill, 111 N. E. 774.

NEW YORK.

AN ACT AMENDING THE TAX LAW GENERALLY (Senate Bill 617, Assembly No. 2118, Charter 323 Laws of 1916) was approved by the Governor on April 26, 1916 and became immediately effective. It makes a number of changes in the wording of the law and in its administration.

THE SECURED DEBT TAX LAW (Senate Bill Int. 1240, Ptd. 1712, Chapter 261, Laws of 1916) was approved by the Governor on April 21, 1916 and went into effect immediately. Its provisions are substantially the same as those of the original act of 1911 as amended in 1915, except that there is an additional provision that any person holding a secured debt for a period of longer than eight months, and not for investment, but for sale, as a security and who maintains an office for the sale of securities, is not assessable with respect thereto. The time for registration under the new law expires January 1, 1917.

GENERAL.

The Corporation Trust Company's Report and Tax Service sends out timely notice to attorneys of reports and tax matters requiring attention in every state and the Provinces of Canada, and gives information regarding forms, practice and rulings.

UNFAIR METHODS OF COMPETITION.

MASSACHUSETTS.

SIMULATING TRADE NAME AND IMITATING GENERAL APPEARANCE OF RETAIL STORES. A retail dealer in hats has twenty-four stores in New York and Brooklyn, one in Providence and two in Boston. In all of these he uses the name "Kaufman" in backhand script with the figures $1.50 and the words "The hats they talk about." Defendants operated retail hat stores in Worcester, Mass., New Haven, Conn., and Woonsocket, R. I., and imitated the first Kaufman's trade-name. This does not constitute unfair competition against which relief may be had. "The trade-name and symbols of the plaintiff cannot extend into regions where his goods are not sold, where he has no customers, and where he has no trade. * * * The mere use of a trade-name which one person has found highly successful in bringing his goods to the favorable attention of the public in one business territory, by another person in another business territory constitutes no actionable wrong." Kaufman v. Kaufman, 111 N. E. 691.

CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

NUMERALS AS THE SUBJECT OF TRADE MARKS AND UNFAIR COMPETITION. "108" as adopted and used with reference to a certain cigar is not entitled to protection against the use of "208" applied to another cigar, where it is not shown that the "dress" of the goods is so similar as to deceive, or be calculated to deceive ordinary purchasers buying with usual care. Whether naked numerals constitute a valid trademark has never been determined, according to the majority opinion. Circuit Judge Putnam, in a dissenting opinion, states that there never has been any authoritative decision that they may not properly be held to be a trademark, and concludes from a review of cases and text writers that they may be so protected. Goldsmith Silver Co. v. Savage, 229 Fed. 623.

CIRCUIT COURT OF APPEALS, THIRD CIRCUIT.

AUTOMOBILE TIRES. In holding that there is no unfair competition against packages containing tires marked "Pennsylvania" by packages of different color marked "Dreadnought Tires 5,000 Miles," the Court quotes with apparent approval a remark of the trial Judge that "it is reasonable to expect closer attention on the part of a retail purchaser to such articles as automobile tires than to pocket knives or packages of chewing gum." American Car & Foundry Co. v. Schachlewich, 229 Fed. 559.

FEDERAL TRADE COMMISSION.

COMPLAINT AGAINST A. B. DICK COMPANY OF NEW JERSEY, THE A. B. DICK COMPANY OF ILLINOIS AND THE NEOSTYLE COMPANY, has been issued to determine the legality under the Clayton Act (Section 3) of "license restrictions" used by these companies. In Henry v. Dick, 224 U. S. 1, it was decided by a divided court that the Dick Company had the right under its patents to require purchasers of its mimeographs not to use supplies therefor manufactured by other concerns. The Clayton Act was passed after this decision was rendered. Section 3 of the Act makes it unlawful to lease or make a sale of goods, machinery, etc., whether patented or unpatented, on the condition that the lessee or purchaser should not use or deal in the goods, machinery, supplies, etc., of a competitor of the lessor or seller where the effect might be to substantially lessen competition or tend to create a monopoly in any line of commerce. During the debate in Congress it was stated that this section of the Clayton Act was intended to repeal the law as laid down in Henry v. Dick. As the practices complained of in that suit have continued since the passage of the new law, the present proceedings are brought to test the effectiveness of its provisions in that regard.

COMPLAINT AGAINST THE SHREDDED WHEAT COMPANY has been issued under Section 5 of the Trade Commission Act, charging the company with unfair methods of competition. Destruction of the business of the Ross Food Company, a competitor of the Shredded Wheat Company, is alleged to have been attempted by enforcing a contract, under which the manufacturer of shredding rolls made this product exclusively for The Shredded Wheat Company; by spying; by securing a list of wholesalers and jobbers through bribery of railroad employees; by threatening legal action; by misrepresenting the Ross product; by continuing litigation under expired patents; and by threatening to withdraw advertisements from mediums sought by the Ross Company. The institution of this proceeding is not a determination that The Shredded Wheat Company has been using these alleged methods. Hearing of the facts and arguments is set for June 1, 1916, or as soon thereafter as the case may be reached.

TRUSTS AND MONOPOLIES.

LOUISIANA.

AMERICAN SUGAR REFINING COMPANY. Petition by the State under its anti-trust laws to oust the American Sugar Refining Company, a New Jersey corporation, from the state, does not show irreparable injury to the public interests nor a cause of action for the issuance of a preliminary injunction or for a writ of sequestiation, nor for the appointment of a receiver. State v. American Sugar Refining Co., 71 So. 137.

UNITED STATES DISTRICT COURT. (MASSACHUSETTS).

SEPARATE AGREEMENTS AS A VIOLATION OF THE SHERMAN LAW. The United States Rubber Company, a New Jersey corporation, is alleged to have made agreements with all the manufacturers of lasts in the United States used in making rubber boots and shoes, for each to hold all its product adapted to rubber footwear for the United States Rubber Company, or subject to its orders. The Hood Rubber Company, of Massachusetts, brought an action at law under the Sherman Act to recover threefold damages against the rubber company and all the manufacturers alleging that they were unable because of these agreements with the rubber company, to procure lasts within the United States. It is held that no cause of action is stated against the defendants, other than the rubber company, since the declaration does not allege any joint or common purpose among them. It does not allege any combination or conspiracy in restraint of trade. Each independently agreed.

"The attempted control was reached for by the rubber company on its own account, and, so far as is alleged, without taking any other person into its confidence or apprising any other defendant of its intent." The fact that the person injured resides within the same state where the entire trade is alleged to be restrained does not deprive him of a right to a remedy under the statute. Though the declaration does not explicitly allege a monopolizing or an attempt to monopolize by the rubber company, the use of the word "control" in the declaration is the substantial equivalent of "monopolize" and a cause of action is stated against the rubber company alone under the second or "monopoly" section of the statute. Hood Rubber Co. v. United States Rubber Co., 229 Fed. 583.

INCOME TAX.

RULINGS AND REGULATIONS.

Since our last issue (See Journal p. 158) the Treasury Department has held that the valuation to be placed on stock dividends is the value at which each share was distributed by the corporation and not the market value (p. 381).

Non-resident aliens are held to be taxable on interest from bonds and dividends from stock (pp. 382, 387 and 388). This decision is held to be effective from January 1, 1916. Three classes of withholding agents are designated: (1) responsible heads, agents or representatives of non-resident aliens in charge of the property owned or business carried on in the United States, who are required to pay the normal and the additional tax on income received for their principals; (2) those having control of income of whatever kind representing income to non-resident aliens from the exercise of any trade or profession, who are required to withhold the normal tax, and (3) those who pay income accruing from corporate obligations to non-resident aliens, who are required to withhold the normal tax (p. 382). Withholding the tax on income from corporate obligations, however, is not required until on and after July 1, 1916 (p. 391). New forms of ownership certificates to be used by non-resident aliens have been prescribed for use on and after July 1, 1916 (p. 391).

Dividends on stock of Federal Reserve Banks are exempt from the tax (p. 385).

Ownership certificates are required on purchase by a corporation of its own bonds between interest dates (p. 389). This reverses the ruling on p. 334 referred to in Journal No. 55, p. 118.

The aggregate payments of income are considered in determining whether the tax should be deducted. Thus payment of a salary of $2,000 and interest of $1,500 to the same person will require deduction on the amount over the exemption, if any, which may be claimed (p. 390).

(NOTE: The page references are to our Income Tax Service 1916, in which these rulings are printed in full. Some of the rulings are formal treasury decisions; others are contained in letters answering specific questions.)

WAR TAX.

Bonds issued under a deed of trust are subject to tax if certified by the trustee and delivered subsequent to November 1, 1914, although subscribed and paid for prior thereto (p. 329).

A decision holds that the tax is not invalid when applied to referee's deeds. The vendee, grantee or other person may be required to pay the tax (p. 330).

T. D. 2297 regarding the tax on proprietors of theatres has been revoked (p. 337.)

On reorganization, if a new corporation is formed, the tax on original issue must be paid, but there is no tax on the exchange of certificates of stock of the old corporation for certificates of the new (p. 338).

The Attorney General holds that no stamps are required on certificates of stock of federal reserve banks (p. 339).

Mutual hail insurance companies are not exempt from the tax (p. 340).

(NOTE: The page references above are to our War Tax Service, in which the rulings and regulations are printed in full. Some of the rulings are formal treasury decisions; others are contained in letters answering specific questions.)

FEDERAL RESERVE.

RULINGS AND REGULATIONS.

Informal rulings have been made by the Federal Reserve Board on stock values to be paid to withdrawing banks, trade acceptances based on importation or exportation, and savings accounts pass books (pp. 427 and 428).

The Law Department has published opinions on the right of liquidating member banks to sell United States bonds securing circulation (p. 428); on warrants issued in anticipation of assured revenue (p. 429); on limitation of loans on farm land (p. 430), and on stamp tax on certificates of stock of federal reserve banks (p. 431).

Member banks may exclude from their gross income for the purpose of the income tax dividends received on stock of federal reserve banks (p. 432).

A statement by the Board of the purchase and exchange of United States bonds in the first quarter of the year appears on pp. 432 to 437.

Opinions of the Attorney General on the power of the Federal Reserve Board to change the location of an established federal reserve bank, and on the preservation of the minimum capitalization requirements of federal reserve banks appear on pp. 439 to 446.

(NOTE: The page references are to our Federal Reserve Act Service, which reports in full all rulings, regulations and opinions of the Federal Reserve Board.)

TRADE COMMISSION.

RULINGS AND REGULATIONS.

A special report on industries has been called for by the Commission. A form has been mailed to each of 260,000 corporations (pp. 65 and 66).

Six conference rulings were made on April 7 (pp. 67 to 69).

Two important complaints were issued during April—one against the A. B. Dick Company and the other against the Shredded Wheat Company (Supp. p. 2). Copies of these complaints have been printed by us for free distribution because of their general interest to lawyers and business men.

(NOTE: The references are to our Federal Trade Commission Service in which the rulings are printed in full.)

STATE LEGISLATURES.

Since the report in the last number of the Corporation Journal the legislatures of the following states have adjourned: Maryland, Mississippi, New Jersey, New York, Rhode Island and Tennessee. Our Legislative Department is prepared to furnish advance copies of new laws at a reasonable charge per copy. If all the new laws on any particular subject are desired, an estimate of the total cost will be given on receipt of information as to the subject and the states to be covered.

NEW PUBLICATIONS.

COMPLAINTS ISSUED BY THE FEDERAL TRADE COMMISSION. Copies of the complaints issued by the Commission against the A. B. Dick Company and the Shredded Wheat Company for violation of the Clayton Act and the Federal Trade Commission Act respectively have been printed by us for general distribution. Copies may be obtained without charge from our nearest office. The questions raised in these complaints are important because of their general application.

THE CORPORATION JOURNAL should be kept in a binder for convenient reference. We furnish a binder for $1.50.

Three Important Decisions in this Number

The case of McDonald v. Mueller on page 161 emphasizes again the importance of careful compliance with the statutes requiring the filing of reports. Many states make the directors or officers personally liable for failure to file reports. This liability has been held to be contractual and consequently enforceable outside the state which has the statute. The McDonald case holds the liability to be primary. The danger to corporation officers is not fanciful—it's real. That is one reason why The Corporation Trust Company's Report and Tax Notification Service is widely taken by counsel for corporations throughout the country. It is invaluable as a source of information and a constant reminder.

The Wichita Film & Supply Company case on, page 171, is of particular interest to counsel for circus, vaudeville and theatrical companies, to baseball clubs and other enterprises that make recurring appearances in cities and towns of two or more states.

The Dalton Adding Machine Company, see page 173, paid a heavy fine for doing business in Virginia without authority. This is undoubtedly evidence of activity in that State to enforce the penalties against all foreign corporations doing business without compliance with the statutes. Other states are also active in this respect. Our foreign corporation department is prepared to furnish attorneys information on the requirements and to assist them in attending to the details of licensing foreign corporations in every state and province.